PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of Barker et al	)	Examiner: Eric Chang
	)	
Serial No. 09/839,179	)	Art Unit: 2116
	)	
Filed: April 19, 2001	)	Confirmation No. 1524
	)	
For: **POWER CONSERVATION IN COMMUNICATION SYSTEMS**	)	

Docket No. RAL919990168US1 (IRA-10-5853)

APPELLANTS' REPLY BRIEF

Mail Stop Reply Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The examiner filed a Revised Answer to the Appeal Brief on November 2, 2006. This Reply Brief is in response thereto.

Claims 1-2 and 4-8 have been rejected under 35 USC 102(b) as being anticipated by U.S. Patent 5,805,597 to Edem, hereinafter Edem. This rejection is not thought to be well taken.

First, with respect to claim 1, Edem shows only a single detection device for detecting low traffic *and* commences to negotiate *only* based on low traffic rates. Applicants, on the other hand, determine not only capability but also eligibility to enter a low power mode. Edem is silent with respect to eligibility to enter low power modes.

For example, applicants have three different commands to enter a low power mode, one of which is low traffic but the other two are time of day and operator commands. Thus, the applicants' device can enter a low power mode not only with low traffic but based on time of day and operator commands. This is not taught or suggested by Edem.

Prior art is anticipatory only if every element of the claimed invention is disclosed in a single item of prior art in the form literally defined in the claim. Jamesbury Corp. v. Litton Indus. Products, 756 F.2d 1556, 225 USPQ 253 (Fed. Cir. 1985); Atlas Powder Co. v. du Pont, 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984); American Hospital Supply v. Travenol Labs, 745 F.2d 1, 223 USPQ 577 (Fed. Cir. 1984). Since the prior art shows only one mechanism for entering the low power mode and applicants claim three distinct modes (or more depending on combinations), a Section 102 rejection is not proper.

Claim 2 is dependent on claim 1 and, for the same reasons, is believed to be allowable.

Claim 4 is a system claim and requires that the selection means is a data communication device for a data exchange mode having a higher speed than the others. The examiner does not comment on this feature of the invention and, thus, for this additional reason (in addition to the features of claim 1), claim 4 is believed to be allowable.

Claim 5 is a system claim and has essentially the same limitations as claim 1 and, for the same reasons, is believed to be allowable.

Claims 6, 7 and 8 are dependent upon claims 1, 4 and 5, respectively, and, for the same reasons, are believed to be allowable.

Claims 9 through 20 have been rejected under 35 USC 103(a) as being unpatentable over the U.S. patent to Edem in view of U.S. Patent 6,360,327 to Hobson, hereinafter Hobson. Since these claims are all dependent directly or indirectly on claims 1, 4 or 5, they are also allowable for the same reasons. Moreover, it is not believed that the combination of the Edem patent with the Hobson reference is apropos. Hobson teaches but a single computer in a sleep mode or in an operating mode, not two operating modes. Additionally, there is no indication in Hobson that the technology would be useful in Edem which is a communication system. Even if one were to combine Hobson with Edem, one would not get the result of having two operating modes but rather a sleep mode and an operating mode. A person would have to use additional skill to determine that the sleep mode is equivalent to the low power operating mode and make the necessary adjustments. Thus, this rejection is not thought to be well taken.

Further, it is believed that a rule of evidence that one may not create an inference upon an inference is violated.[1] The first inference with no back-up data is that the Hobson teaching can be combined with Edem, and the second inference, which is based on the first inference also without back-up data, is that Hobson can be modified.

[1] Ohio Jur 3d Evidence Section 110 – Federal laws follow state laws with respect to rules of evidence.

Article III. "Presumptions in Civil Actions and Proceedings", Rule 301. Presumptions in General Civil Actions and Proceedings. In all civil actions and proceedings, not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

In view of the above, it is believed that the claims in the application are allowable as presented.

Respectfully submitted,

Date: DECEMBER 29, 2006

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Attachments

CLAIM APPENDIX

1. (Previously presented) A method of conserving power consumption in a communication system which includes components capable of selectively entering a low power operating mode, components capable of determining eligibility of the system to enter a low power operating mode based on operator generated signals, time of day, or non-use of the system for a period of time, or a combination thereof, and an auto-negotiation feature by exchanging messages indicative of a low power operating mode capability, using an auto-negotiation feature to interpret exchanged signals to verify that connected systems include the low power mode capability and eligibility to enter the low power mode, and transmitting a signal that a communications session is completed to cause connected systems to enter the low power mode.

2. (Original) The method of claim 1 wherein said auto-negotiation feature is a next-page facility.

3. (Canceled)

4. (Original) In a system utilizing a data communication device having a plurality of data exchange modes, each of said modes operating at different speeds, one of which speeds consumes less power than another, protocol means for compatibly coupling said data communication device to another data communication device for exchanging data therebetween, and selection means in said data communication device for a data exchange mode having a higher speed than the others, a method for switching

to a least power consuming speed which consumes less power when in an idle mode, by exchanging data representative of said data communication devices ability and eligibility to operate at the least power consuming speed, decoding via said protocol means said representative data, and changing to said least power consuming speed in response to another protocol signal.

5. (Original) In a local area network which includes Ethernet data terminal equipment capable of low power modes and employing auto-negotiation, a method for conserving power consumption during periods of low usage by using a next-page aspect of the auto-negotiation feature to communicate among terminal data equipment each equipment's capability to assume a low power mode, detecting periods of low network usage, verifying in response to detection of low network usage that each equipment is eligible to assume the low power mode by use of the auto-negotiation feature, and asserting signals to put each eligible equipment in a low power mode of operation.

6. (Original) The invention as defined in claim 1 wherein the components to put the system in low power mode are selectively detectable and control portions of a physical layer device in said system.

7. (Original) The invention as defined in claim 4 wherein the protocol to put the system in low power mode selectively detects and selectively controls portions of a physical layer device in said system.

8. (Original) The invention as defined in claim 5 wherein the method to put the system in low power mode selectively detects and selectively controls portions of a physical layer device in said system.

9. (Original) The invention as defined in claim 1 wherein the eligibility to enter the low power mode is stored in the system.

10. (Original) The invention as defined in claim 1 wherein the eligibility to enter the low power mode is stored in binary bits in the system.

11. (Previously presented) The invention as defined in claim 10 wherein the binary bits are located an organizationally unique identifier.

12. (Original) The invention as defined in claim 10 wherein the eligibility is stored in at least one bit.

13. (Original) The invention as defined in claim 4 wherein the eligibility to enter the least power speed is stored in the system.

14. (Original) The invention as defined in claim 4 wherein the eligibility to enter the least power speed is stored in binary bits in the system.

15. (Previously presented) The invention as defined in claim 14 wherein the binary bits are located an organizationally unique identifier.

16. (Original) The invention as defined in claim 14 wherein the eligibility is stored in at least one bit.

17. (Original) The invention as defined in claim 5 wherein the eligibility to enter the low power mode is stored in the system.

18. (Original) The invention as defined in claim 5 wherein the eligibility to enter the low power mode is stored in binary bits in the system.

19. (Previously presented) The invention as defined in claim 18 wherein the binary bits are located in an organizationally unique identifier.

20. (Original) The invention as defined in claim 18 wherein the eligibility is stored in at least one bit.

EVIDENCE APPENDIX

Ohio Jur 3d Evidence Section 110 – "Founding one presumption or inference upon another", pp 312-314

Article III. "PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS", Rule 301. Presumptions in General Civil Actions and Proceedings.

RELATED PROCEEDINGS APPENDIX

None known to undersigned attorney.

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presumptions, one of which must give way. One approach requires the judge to determine which presmption should prevail, based upon factors such as public policy. Another approach is to allow the two presumptions to cancel each other out.[1]

◆ **Illustration:** Where, at a time when no mortgage was in existence, a grantor executed a deed which provided in the warranty clause that there was a mortgage to a named mortgagee which the grantee assumed and agreed to pay, and after execution of the deed the grantor obtained a mortgage on the property conveyed, conflicting presumptions existed that the grantor intended to pass title to the property on the date of execution of the deed and that the grantor had title to the property when he executed the mortgage. It was presumed, therefore, that the deed was intended to become operative after the mortgage was executed, particularly where the deed was not recorded until after recordation of the mortgage, and the recording of the deed was prima facie evidence of its delivery and acceptance on the date of recordation. Accordingly, the grantee was liable on the assumption agreement contained in the deed.[2]

Where two conceptions of a transaction are possible, one suggesting fraud and the other an honest purpose, the latter will be given effect.[3]

§ 110 Founding one presumption or inference upon another

Research References

West's Key Number Digest, Evidence ⊂=54

A presumption can be legally indulged in only when the facts from which it arises are proved by direct evidence.[1]

[Section 109]

[1]Am. Jur. 2d, Evidence § 201.

[2]Government Sav. & Loan Co. v. Kaplan, 35 Ohio App. 2d 129, 64 Ohio Op. 2d 242, 300 N.E.2d 243 (1st Dist. Hamilton County 1971).

[3]Penn Mut. Life Ins. Co. v. Reed, 49 Ohio App. 463, 3 Ohio Op. 335, 19 Ohio L. Abs. 449, 197 N.E. 362 (5th Dist. Stark County 1934).

[Section 110]

[1]McDougall v. Glenn Cartage Co., 169 Ohio St. 522, 9 Ohio Op. 2d 12, 160 N.E.2d 268 (1959); Domany v. Otis Elevator Co., 369 F.2d 604, 13 Ohio Misc. 161, 41 Ohio Op. 2d 355, 42 Ohio Op. 2d 153 (6th Cir. 1966); Shepfer v. Wheeling & L.E. Ry. Co., 12 Ohio L. Abs. 135, 1932 WL 1697 (Ct.

Under this principle, one presumption or inference cannot be deduced from or predicated upon another presumption or inference.[2] Each presumption must be predicated upon the facts supported by evidence.[3] This rule is intended to prevent inferences from becoming too uncertain or speculative, or mere conjecture.[4] If an inference is based on an earlier infer-

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App. 5th Dist. Tuscarawas County 1932).

[2]Hurt v. Charles J. Rogers Transp. Co., 164 Ohio St. 329, 58 Ohio Op. 122, 130 N.E.2d 820 (1955); Halkias v. Wilkoff Co., 141 Ohio St. 139, 25 Ohio Op. 257, 47 N.E.2d 199 (1943) (overruled on other grounds by, Helmick v. Republic-Franklin Ins. Co., 39 Ohio St. 3d 71, 529 N.E.2d 464 (1988)); Thomas v. Black, 118 Ohio St. 412, 6 Ohio L. Abs. 369, 161 N.E. 208 (1928); St. Marys Gas Co. v. Brodbeck, 114 Ohio St. 423, 4 Ohio L. Abs. 225, 151 N.E. 323 (1926); Titanium Industries v. S.E.A., Inc., 118 Ohio App. 3d 39, 691 N.E.2d 1087 (7th Dist. Mahoning County 1997); Price v. Cox, 104 Ohio App. 251, 4 Ohio Op. 2d 402, 148 N.E.2d 527 (4th Dist. Hocking County 1957); Hartenstein v. New York Life Ins. Co., 93 Ohio App. 413, 51 Ohio Op. 175, 113 N.E.2d 712 (9th Dist. Summit County 1952); McMullen v. F. & R. Lazarus & Co., 62 Ohio L. Abs. 289, 107 N.E.2d 250 (Ct. App. 2d Dist. Franklin County 1951); Penter v. Schwartz, 85 Ohio App. 477, 40 Ohio Op. 342, 89 N.E.2d 154 (1st Dist. Hamilton County 1949); City of Columbus v. Treadwell, 46 Ohio L. Abs. 367, 65 N.E.2d 720 (Ct. App. 2d Dist. Franklin County 1946); Muller v. U.S. Postal Service, 811 F. Supp. 325 (N.D. Ohio 1992) (Ohio law).

Annotation References: Modern status of the rules against basing an inference upon an inference or a presumption upon a presumption, 5 A.L.R. 3d 100.

[3]Hoppe v. Industrial Commission of Ohio, 137 Ohio St. 367, 19 Ohio Op. 88, 30 N.E.2d 703 (1940); Sobolovitz v. Lubric Oil Co., 107 Ohio St. 204, 1 Ohio L. Abs. 261, 140 N.E. 634 (1923) (overruled in part on other grounds by, McDougall v. Glenn Cartage Co., 169 Ohio St. 522, 9 Ohio Op. 2d 12, 160 N.E.2d 266 (1959)) and (overruling on other grounds recognized by, State v. Miller, 1990 WL 27166 (Ohio Ct. App. 9th Dist. Medina County 1990)); City of Columbus v. Treadwell, 46 Ohio L. Abs. 367, 65 N.E.2d 720 (Ct. App. 2d Dist. Franklin County 1946); Apseloff v. Northwestern Nat. Ins. Co., 34 Ohio L. Abs. 149, 36 N.E.2d 194 (Ct. App. 1st Dist. Hamilton County 1941); House v. Stark Iron & Metal Co., 33 Ohio L. Abs. 345, 34 N.E.2d 592 (Ct. App. 2d Dist. Franklin County 1940); Augusta v. Paradis, 61 Ohio App. 323, 15 Ohio Op. 218, 22 N.E.2d 578 (5th Dist. Stark County 1939); Sheley v. Swing, 65 Ohio App. 109, 15 Ohio Op. 381, 29 Ohio L. Abs. 244, 29 N.E.2d 364 (1st Dist. Hamilton County 1939); Skoczylas v. McGowan, 44 Ohio App. 277, 14 Ohio L. Abs. 35, 185 N.E. 539 (9th Dist. Summit County 1933).

[4]Hurt v. Charles J. Rogers Transp. Co., 164 Ohio St. 329, 58 Ohio Op. 122, 130 N.E.2d 820 (1955); Hall v. Ferro-Concrete Const. Co., 71 Ohio App. 545, 26

ence which was itself purely speculative and unsupported by any established fact, neither inference has any probative value.[5]

The rule that an inference cannot be based upon an inference applies only to instances where one inference is based solely upon another and is unsupported by any additional facts or inferences drawn from other facts.[6] A jury may consider a reasonable parallel inference, which is based in part on another inference and in part on facts.[7]

There is no prohibition against drawing two or more different inferences from the same proven facts,[8] as where one set of facts gives rise to two or more inferences, one inference is not built upon another, but each is drawn separately from the same facts.[9]

Ohio Op. 478, 39 Ohio L. Abs. 360, 50 N.E.2d 556 (1st Dist. Hamilton County 1943).

[5]McClain v. Kroger Co., 114 Ohio App. 295, 17 Ohio Op. 2d 278, 175 N.E.2d 199 (1st Dist. Butler County 1961); Hartenstein v. New York Life Ins. Co., 93 Ohio App. 413, 51 Ohio Op. 175, 113 N.E.2d 712 (9th Dist. Summit County 1952).

[6]Hurt v. Charles J. Rogers Transp. Co., 164 Ohio St. 329, 58 Ohio Op. 122, 130 N.E.2d 820 (1955); Titanium Industries v. S.E. A., Inc., 118 Ohio App. 3d 39, 691 N.E.2d 1087 (7th Dist. Mahoning County 1997); Donaldson v. N. Trading Co., 92 Ohio App. 3d 476, 612 N.E.2d 754 (10th Dist. Franklin County 1992); Bell v. Giamarco, 50 Ohio App. 3d 61, 553 N.E.2d 694 (10th Dist. Franklin County 1988); Great Atlantic & Pacific Tea Co. v. Hughes, 58 Ohio App. 255, 7 Ohio Op. 72, 21 Ohio L. Abs. 557, 4 N.E.2d 760 (7th Dist. Mahoning County 1935), aff'd, 131 Ohio St. 501, 6 Ohio Op. 164, 3 N.E.2d 415 (1938).

[7]Hurt v. Charles J. Rogers Transp. Co., 164 Ohio St. 329, 58 Ohio Op. 122, 130 N.E.2d 820 (1955).

[8]Motorists Mut. Ins. Co. v. Hamilton Tp. Trustees, 28 Ohio St. 3d 13, 502 N.E.2d 204 (1986) (no impermissible stacking of inferences where jury based verdict partly on reasonable inference drawn from facts in evidence, and partly on another inference drawn from same facts and from common human experience); Hurt v. Charles J. Rogers Transp. Co., 164 Ohio St. 329, 58 Ohio Op. 122, 130 N.E.2d 820 (1955); House v. Stark Iron & Metal Co., 33 Ohio L. Abs. 345, 34 N.E.2d 592 (Ct. App. 2d Dist. Franklin County 1940).

[9]McDougall v. Glenn Cartage Co., 169 Ohio St. 522, 9 Ohio Op. 2d 12, 160 N.E.2d 266 (1959); Bell v. Giamarco, 50 Ohio App. 3d 61, 553 N.E.2d 694 (10th Dist. Franklin County 1988).

ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS [Table of Contents]

Rule 301. Presumptions in General Civil Actions and Proceedings

In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.